

Message Text

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ACTION L-03

INFO OCT-01 EUR-12 ISO-00 FCSC-01 EB-08 TRSE-00 SS-15
SP-02 SEC-01 OMB-01 FRB-03 H-01 JUSE-00 CIAE-00
INR-10 NSAE-00 /058 W
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R 101537Z MAR 78
FM AMEMBASSY BONN
TO SECSTATE WASHDC 6626
INFO AMEMBASSY BERLIN
AMCONSUL MUNICH

C O N F I D E N T I A L SECTION 01 OF 02 BONN 04392

MUNICH FOR CHARIG

E.O. 11652: GDS
TAGS: CPRS PGOV GW US GE
SUBJECT: OVERLAPPING GERMAN CLAIMS

REFS: (A) STATE 56532; (B) STATE 54306; (C) BONN 3420

BEGIN SUMMARY. EMBOFF MARCH 9 MADE DEMARCHE TO FRG FOREIGN OFFICE PARALLELING THE DEPARTMENT'S APPROACH TO THE FRG EMBASSY IN WASHINGTON. EMBOFF EXPRESSED HOPE THAT ASSURANCE PROPOSED BY USG WOULD JUSTIFY WITHDRAWAL OF FREYMUTH APPEAL AND TERMINATION OF PROCESSING STOP, AS CONTINUATION OF STOP COULD LEAD TO AGGRAVATION OF CONCERN AND INVOLVEMENT OF US CONGRESS. THIS WOULD BE UNFORTUNATE AS IT WOULD BE DIFFICULT TO EXPLAIN THE DIFFERENCE IN THE MEASURE OF COMPENSATION TO WHICH THOSE PERSECUTEES RECOVERING UNDER THE FRG RESTITUTION LAWS AND THOSE PERSECUTEES AMONG CURRENT US CLAIMANTS WHO MAY RECOVER UNDER THE EQUALIZATION LAW, FOR PROPERTY CONFISCATED DURING THE NAZI REGIME OR BY ACTION OF THE GDR, ARE ENTITLED. FONOFF OFFICIAL STATED THAT FRG VACATIONS MAKE PLANNED FRG INTER-AGENCY MEETING
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IMPOSSIBLE BEFORE EARLY APRIL, AND THAT DECISION ON USG ASSURANCE WOULD NOT BE FORTHCOMING BEFORE THAT TIME.
END SUMMARY.

1. IN ABSENCE BOTH OF VERBEEK AND RUMPF THIS WEEK, EMBOFF ON MARCH 9 SAW RUMPF'S ASSISTANT, ARNDT, TO MAKE DEMARCHE PARALLEL TO THAT MADE BY DEPARTMENT TO FRG

EMBASSY LEGAL OFFICER VON SCHMELING. EMBOFF LEFT WITH ARNDT A COPY OF THE TEXT OF USG ASSURANCE CONTAINED PARA 3 OF REFTEL (A), EXPLAINING THAT THIS WAS MOST FORTHCOMING LANGUAGE DEPARTMENT WAS ABLE TO PROPOSE AND EXPRESSING HOPE THAT THIS WOULD SUFFICE TO PERMIT FRG AUTHORITIES TO WITHDRAW APPEALS FROM FREYMUTH DECISION AND PERMIT LIFTING OF PENDING PROCESSING-STOP ON US NATIONAL CLAIMS. EMBOFF EXPRESSED CONCERN THAT IF THIS ASSURANCE OR SOMETHING VERY SIMILAR TO IT SHOULD NOT DO THE TRICK, THERE MIGHT WELL BE DEVELOPMENTS, POSSIBLY INVOLVING THE US CONGRESS, THAT COULD POLITICIZE AND COMPLICATE THIS MATTER.

2. ARNDT STATED THAT WHILE HE WAS GENERALLY FAMILIAR WITH THIS MATTER, HE WAS NOT FULLY APPRISED OF ALL DETAILS. HOWEVER, HE HAD READ REPORT ON EMBOFF'S FEBRUARY 23 MEETING WITH VERBEEK AND RUMPF, AS WELL AS VON SCHMELING'S REPORT FROM WASHINGTON ON HIS VERY RECENT MEETING WITH DEPARTMENT OFFICERS. ARNDT SAID HE COULD NOT JUDGE WHETHER THE USG ASSURANCE WOULD PROVE ADEQUATE. THE MATTER WOULD BE THE TOPIC OF A DISCUSSION BETWEEN THE RESPONSIBLE MINISTRIES INCLUDING THE FOREIGN OFFICE, AND THE FEDERAL EQUALIZATION OFFICE (BAA) WHEN DECISION WOULD BE REACHED WHETHER THE WILLINGNESS OF THE USG "TO CONSULT" WOULD BE ADEQUATE TO JUSTIFY WITHDRAWAL OF THE FREYMUTH APPEALS AND TERMINATION OF THE CONFIDENTIAL

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PROCESSING-STOP. HE SAID THAT FROM A STRICTLY LEGAL POINT OF VIEW THE ASSURANCE DID NOT SEEM TO AMOUNT TO MUCH. HE RECOGNIZED THAT ANY US/GDR SETTLEMENT WAS IN THE FAR DISTANT FUTURE, STATING THAT HE WAS RESPONSIBLE WITHIN THE FOREIGN OFFICE FOR FOLLOWING CLOSELY GDR NEGOTIATIONS ON CLAIM SETTLEMENTS WITH OTHER COUNTRIES BECAUSE OF THEIR RELEVANCE TO THE EXPECTATIONS OF OTHER STATES WITH REGARD TO THE FRG. HE MENTIONED THAT THE BAA HAD ISSUED INSTRUCTIONS THAT ITS FIELD OFFICES SHOULD ADVISE US CLAIMANTS THAT THEY SHOULD MAKE TIMELY APPLICATION TO THE FCSC RE PROPERTY CONFISCATED BY THE GDR. THESE RECOMMENDATIONS TO US CLAIMANTS WERE, OF COURSE, ONLY THAT, AND NON-PURSUIT OF THESE RECOMMENDATIONS WOULD NOT ENTAIL ANY LEGAL CONSEQUENCES FOR THEM.

3. ARNDT SAID THAT IN VIEW OF THE UPCOMING SPRING VACATION PERIOD, THE MATTER WOULD NOT BE DISCUSSED AMONG COMPETENT AGENCIES BEFORE EARLY APRIL; THUS, A DECISION

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C O N F I D E N T I A L SECTION 02 OF 02 BONN 04392

ON THE PROPOSED USG ASSURANCES WOULD BE AT LEAST ANOTHER MONTH IN COMING. HE NOTED THE PROPOSAL BY EMBOFF THAT THE BAA BEGIN NOW WITH THE PREPARATION OF A LIST OF US CLAIMANTS CONSIDERED SUBJECT TO THE PROCESSING STOP, SO THAT THIS LIST COULD BE PROVIDED TO THE EMBASSY/ DEPARTMENT FOR COMPARISON WITH THE LIST OF FCSC CLAIMANTS BY MAY 15 IN AN EFFORT TO DETERMINE THE NUMBER OF CASES FOR WHICH A SECOND EVENTUAL RECOVERY BY REASON OF A US/GDR SETTLEMENT MIGHT BE POSSIBLE. HE EXPRESSED PERSONAL UNDERSTANDING FOR EMBOFF'S VIEW THAT A BASIS WOULD EXIST FOR THE PROCESSING STOP TO BE LIFTED WITH RESPECT TO THOSE US CLAIMANTS ON THE FRG LIST WHO HAVE NOT REPEAT NOT FILED A TIMELY CLAIM WITH THE FCSC CONCERNING THE SAME PROPERTY.

4. EMBOFF PROVIDED ARNDT WITH ORAL ANSWERS PROVIDED IN PARAS 2 AND 3 OF REFTEL (B) TO THE QUESTIONS CONCERNING SECTION 605 OF PL 94-542 SUMMARIZED IN PARA 8 OF REFTEL (C). ARNDT EXPRESSED APPRECIATION FOR THESE INTERPRETATIONS.

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5. IN OUR VIEW DEPARTMENT'S INSTRUCTION IN REFTEL (B) SUGGESTS THAT IT MAY HAVE BEEN BASED ON AN INCOMPLETE UNDERSTANDING OF THE PURPOSE AND PHILOSOPHY OF THE FEDERAL EQUALIZATION LAW IN THESE CASES. THAT LAW WAS NOT DESIGNED TO PROVIDE FULL RESTITUTION OR COMPENSATION FOR LOSSES SUFFERED BY GERMANS AS A RESULT OF THE WAR, NOR WAS IT SPECIFICALLY DESIGNED TO PROVIDE RESTITUTION TO PERSONS PROSECUTED FOR RELIGIOUS, RACIAL OR POLITICAL REASONS. RATHER, THE UNDERLYING LAW IS DESIGNED TO EQUALIZE AMONG GERMANS THE BURDEN OF THE LOSSES WHICH GERMANS SUFFERED IN UNEQUAL DEGREES AS A RESULT OF WAR DESTRUCTION OR GDR CONFISCATION OF THEIR PROPERTY LOCATED IN THE GDR. NAZI PERSECUTEES WHOSE HEALTH AND PROPERTY WERE AFFECTED BY NAZI PERSECUTION MEASURES HAVE HAD THE OPPORTUNITY TO FILE AND OBTAIN COMPENSATION IN THE FORM OF RESTITUTION UNDER FRG RESTITUTION LAWS SPECIFICALLY DESIGNED FOR THAT PURPOSE. THOSE PERSECUTEES WHO HAD LEFT BEHIND PROPERTY IN FLEEING FROM NAZI PERSECUTORY MEASURES DID NOT QUALIFY FOR RESTITUTION WITH RESPECT TO SUCH PROPERTY, BUT WERE ABLE UNDER THE GERMAN EQUALIZATION OF BURDENS LAW APPLICABLE TO ALL GERMANS TO RECOVER SOME COMPENSATION ON THE THEORY THAT THE CONFISCATION OF PROPERTY THEY LEFT BEHIND WAS NOT VALID, THEIR TITLE THERETO THUS FICTITIOUSLY CONTINUING BEYOND 1945 UNTIL CONFISCATION OF THE PROPERTY UNDER GDR LAW. THEY WERE PLACED UNDER THE EQUALIZATION LAW ON A PAR WITH GERMANS WHOSE PROPERTY IN THE GDR HAD BEEN CONFISCATED AFTER WWII, INCLUDING NON-PERSECUTEES WHO HAD SINCE BECOME AMERICANS.

6. EMBOFF POINTED OUT TO ARNDT THAT IT WOULD BE BEST TO SEEK TO AVOID THE NEED TO MAKE FAR-REACHING EXPLANATIONS
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TO CONGRESS AND TO OTHERS OF THE REASONS FOR THE GERMAN LEGAL REQUIREMENT FOR RECOUPMENT INTO THE EQUALIZATION FUND (EF). IT COULD PROVE HARD TO EXPLAIN WHY PERSECUTEES WHO REMAINED IN GERMANY AND WHOSE PROPERTY WAS TAKEN FROM THEM DURING THE NAZI PERIOD WERE, UNDER GERMAN RESTITUTION LAWS, MORE FULLY COMPENSATED FOR LOST PROPERTY THAN PERSECUTEES WHO FLED GERMANY IN AN EFFORT TO AVOID PERSECUTORY MEASURES AGAINST THEM AND UNDER LAWS THEN IN FORCE WERE DEEMED TO HAVE LOST TITLE TO PROPERTY LEFT BEHIND ON THE THEORY THAT IT HAD BEEN ABANDONED.

7. THE FACT REMAINS, HOWEVER, THAT THE RIGHT TO PAYMENT FROM THE EF IS BASED ON A LAW THAT GOVERNS THE RESPONSIBILITIES OF FRG OFFICIALS, A PROVISION OF

WHICH IMPOSES A REQUIREMENT ON THE CLAIMANT TO MAKE A CERTAIN, PARTIAL, REPAYMENT BACK INTO THE EF IF HE SUBSEQUENTLY RECEIVES A SECOND COMPENSATION PAYMENT FROM ANOTHER SOURCE WITH RESPECT TO THE SAME PROPERTY. EMBOFF INQUIRED WHETHER RECIPIENTS OF PAYMENTS FROM THE EF WERE REQUIRED TO SIGN ANY KIND OF ACKNOWLEDGEMENT OF THE RIGHT OF THE EF TO SUCH RECOUPMENT, OR WHETHER THE RIGHT TO RECOUPMENT WAS BASED EXCLUSIVELY ON THE FACT THAT THE EQUALIZATION OF BURDENS LAW PROVIDED FOR IT. ARNDT SAID HE DID NOT KNOW ENOUGH OF THE DETAILS OF PAYMENT PROCEDURES TO BE ABLE TO ANSWER THIS QUESTION. MEEHAN

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